



GLOBAL  
INTELLECTUAL PROPERTY  
CENTER

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January 14, 2010

**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: *In the Matter of Preserving the Open Internet, GN Docket No. 09-191  
and In the Matter of Broadband Industry Practices, WC Docket No. 07-52***

Dear Ms. Dortch:

The U.S. Chamber of Commerce's Global Intellectual Property Center is pleased to submit these comments to the Federal Communications Commission ("Commission") in response to the Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.<sup>1</sup>

We commend the Commission for this initiative. In particular, we applaud the NPRM's thoughtful approach to the concept of "reasonable network management," and its forthright recognition that this concept must embrace "reasonable action to prevent the transfer of unlawful content, such as the unlawful distribution of copyrighted works."<sup>2</sup>

Broadband serves as a platform for commerce and helps to keep Americans connected and entertained. American creators have provided much of the content that helps drive consumer demand for broadband, and content companies are continually exploring new and innovative ways to get content to consumers, utilizing many business models and providing content at a variety of price points. This

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<sup>1</sup> *In the Matter of Preserving the Open Internet*, GN Docket No. 09-191 and *In the Matter of Broadband Industry Practices*, WC Docket No. 07-52, Notice of Proposed Rulemaking, FCC 09-93 (rel. Oct. 22, 2009). ("NPRM").

<sup>2</sup> See NPRM at ¶16 (Bullet 4).

content has driven millions of Americans to seek faster internet connections and, thereby, helped further the administration's goal of full broadband deployment.

The industries that are producing this content and helping drive broadband adoption are also important contributors to the U.S. economy. Copyright industries provided more than 22% of the nation's total real growth from 2006 – 2007. Moreover, in 2007, these industries provided 5.6 million jobs.<sup>3</sup>

However, the strength of these industries is threatened and their contributions to the economy are diminished by intellectual property (IP) theft, especially online. IP theft costs the U.S. economy hundreds of billions of dollars annually and has also led to the loss of hundreds of thousands of jobs. Major U.S. motion picture studios alone are estimated to have lost \$6.1 billion to piracy in 2005—more than \$2.3 billion of that loss occurred online.<sup>4</sup> Similarly, it is estimated that the U.S. economy loses \$12.5 billion in total output annually as a result of music piracy, as well as the loss of 71,060 jobs.<sup>5</sup>

These staggering economic losses not only mean fewer jobs and less tax revenue for the government, but also inhibit the development of new content and platforms that fuel the demand for broadband. Therefore, successful broadband deployment in many ways hinges on our ability to combat IP theft online and our ability to increase the availability and accessibility of lawful content. The NPRM recognizes and affirms this connection.<sup>6</sup> Cooperative efforts of content providers, network operators, technology companies, and other industries will be needed to meet this challenge effectively.

There are currently many technologies and cooperative agreements under development to help improve the broadband user experience and limit unlawful and unwanted activities on broadband networks, whether it be spam, malware, or the distribution of unlawful content such as child pornography and transmissions that violate copyright law. Similarly, there are new technologies and new business models in development that that help utilize broadband for enabling new, innovative and legal

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<sup>3</sup> Fact Sheet, *Copyright Industries In the U.S. Economy: The 2003-2007 Report*, International Intellectual Property Alliance, July 20, 2009, p. 1, available at: <<http://www.iipa.com/pdf/IIPA2009Report2PageSummary.pdf>>.

<sup>4</sup> *The Cost of Movie Piracy: An Analysis prepared by LEK for the Motion Picture Association*, L.E.K. Consulting and Motion Picture Association, p. 4, available at: <[www.mpa.org/press\\_releases/leksummarympa.pdf](http://www.mpa.org/press_releases/leksummarympa.pdf)>.

<sup>5</sup> Siewick, Stephen E., *The True Cost of Sound Recording Piracy to the U.S. Economy*, Institute for Policy Innovation Report # 188, August 21, 2007.

<sup>6</sup> See NPRM at ¶139 (“the unlawful distribution of copyrighted works ... has adverse consequences on the economy and the overall broadband ecosystem”).

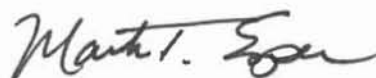
ways to access copyrighted content. Any policy that prohibits or restricts reasonable measures to address these activities would not only stifle such innovative efforts going forward, but it would also send the wrong signal to taxpayers, law enforcement, industry and others about the national commitment to enforcing the law and protecting consumers, regardless of the environment in which they operate.

To that end, we strongly urge the Commission, as it develops and implements broadband policies and regulations that promote a free and open Internet, to:

- Recognize the critical importance and preserve the ability of Internet Service Providers to manage their networks, in a responsible and efficient manner.
- Acknowledge that reasonable network management practices can include the use of technology and new business models aimed at preventing the distribution and reducing the demand for unlawful content, so long as reasonable steps are taken to minimize unavoidable incidental impacts on legitimate traffic.
- Encourage the development of technologies and practices that can effectively target this unlawful content. Promote flexibility and avoid prescriptive policies and regulations that might stunt innovation and the development of these technologies.
- Encourage cooperation and collaboration between Internet Service Providers and content creators on solutions to prevent the distribution of unlawful content and to enable the distribution of lawful content.

We appreciate the Commission's attention to this important issue, and are encouraged that the NPRM's approach appears generally consistent with the points outlined above. We look forward to continuing to work with you to help protect intellectual property as the Commission works to expand broadband deployment.

Sincerely,



Mark T. Esper, Ph.D.  
Executive Vice President  
Global Intellectual Property Center  
U.S. Chamber of Commerce